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No. 90-701

In The

Supreme Court of the United States

October Term, 1990

A. L. LOCKHART, Superintendent,
Arkansas Department of Correction;
LARRY NORRIS, Warden,
Maximum Security Unit, Arkansas
Department of Correction,

Petitioners,

v.

BILAL ALI SALAAM,
a/k/a KEVIN ROBINSON,

Respondent.

On Writ Of Certiorari From The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent is an inmate in the custody of the Arkansas Department of Correction and was committed under the name Kevin Robinson. While in prison, Respondent converted to Islam and legally changed his name to Bilal Ali Salaam. Respondent's religion required

him to adopt his new name in order to demonstrate his new state of spiritual enlightenment. Petitioners adopted and implemented a committed name policy which provides that only the inmate's committed name may appear on the inmate's uniforms, institutional records and ingoing and outgoing mail. Respondent filed a complaint against Petitioners under 42 U.S.C. § 1983 in which he alleged Petitioners' committed name policy abridged his free exercise right under the First Amendment.

The District Court upheld the committed name policy and entered judgment for Petitioners. On appeal, Respondent proposed an "a/k/a" alternative to the committed name policy. Respondent's proposed "a/k/a" alternative would require Petitioners to place Respondent's Muslim name in addition to his committed name on prison clothing and on the "inmate jacket" or main institution file so that Respondent could obtain services from the prison such as cashing money orders, commissary privileges, law library privileges and ingoing and outgoing mail by the use of his Muslim name.

The Court of Appeals remanded the case to the District Court with instructions to review Petitioners' committed name policy in light of Respondent's "a/k/a" alternative and the reasonable relationship standard set forth in *Turner v. Safley*, 482 U.S. 78 (1987). *Salaam v. Lockhart*, 856 F.2d 1120, 1123 (8th Cir. 1988) ("Salaam I").

On remand, the District Court held that the committed name policy did not violate Respondent's free exercise right and the "a/k/a" alternative would have more than *de minimis* effect on the asserted penological interests.

On appeal, the Court of Appeals reversed the District Court and held that the committed name policy violated Respondent's free exercise right in light of the proposed "a/k/a" alternative. *Salaam v. Lockhart*, 905 F.2d 1168 (8th Cir. 1990) ("Salaam II").

SUMMARY OF ARGUMENT

The decision below is legally correct and fair to the parties. It does not create a split in the circuits. The essence of Petitioners' challenge is that the court below erred in its factual findings rather than in the application of legal standards. The Petition for Writ of Certiorari does not meet any of the enumerated circumstances in Rule 10 of the Rules of Supreme Court for the granting of Certiorari. Nor does the Petition set forth any other special or important reason for the granting of Certiorari in this case.

ARGUMENT

I.

THE DECISION BELOW IS LEGALLY CORRECT AND THE RESULT IS FAIR.

In *Salaam I* the Court of Appeals remanded the matter for further consideration under *Turner* and noted that Respondent's proposed "a/k/a" alternative might be evidence that the committed name policy was unreasonable when examined under the fourth *Turner* criterion. The fourth *Turner* criterion provides that "if an inmate can

point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard." 482 U.S. at 90-91. In *Salaam II* the Court of Appeals applied the four *Turner* criteria and held the Petitioners' committed name policy did not satisfy *Turner*'s reasonable relationship standard.

Petitioners misstate the nature of the "a/k/a" proposal on page nine of their Petition when they state the Respondent "was to be addressed and recognized by his Muslim name but he would 'compromise' and allow his commitment name to remain on his clothing and records as well as the new name." In fact, the "a/k/a" proposal only contemplated the placement of the Muslim name and the committed name on the prison clothing and on the "inmate jacket" or main institution file so that Respondent could obtain services from the prison such as cashing money orders, commissary privileges, law library privileges and ingoing and outgoing mail by the use of his Muslim name. Moreover, Respondent testified that correction officers would not be required to address him by his Muslim name and that he would respond to his committed name.

The Court of Appeals found that the evidence demonstrated the "a/k/a" alternative would have no more than *de minimis* effect on the asserted penological interests of administrative ease, ability to readily identify inmates and prevention of confrontations. The court found the burden of adding Respondent's Muslim name to certain files and lists was not onerous. 905 F.2d at 1173. It found Petitioners' fear of a "ripple effect" in the form

of numerous insincere name changes designed to maliciously clog the system constituted the "piling of conjecture upon conjecture." *Id.* at 1174. Finally, the court found Petitioners' fears of confrontations and misidentification were not supported by the record. *Id.* at 1175. The standard applied by the court below was no more strict than that set forth in *Turner*. The evidence simply established no reasonable relationship between the committed name policy and the asserted penological objectives in light of the "a/k/a" proposal.

Moreover, the result below is fair to all concerned. Respondent did not receive the "all or nothing" relief originally prayed for but agreed to a mutual accommodation of his First Amendment right and Petitioners' valid penological interests.

II.

THE DECISION BELOW DOES NOT CREATE A SPLIT IN THE CIRCUITS.

Petitioners misconstrue the decision below when they characterize the Eighth Circuit's analysis as a balancing test. The Eighth Circuit simply applied the *Turner* reasonable relationship test. It construed *Turner* and *Thornburg v. Abbott*, 109 S.Ct. 1874 (1989) as requiring it to "make sure after an independent review of the evidence that the regulation is not an exaggerated response to prison concerns." 905 F.2d at 1171.

Indeed, other circuits have applied the *Turner* criteria and reached the conclusion the challenged prison regulation is not reasonably related to the asserted penological interest. *Valentine v. Beyer*, 850 F.2d 95 (3rd Cir. 1988);

DeMallory v. Cullen, 855 F.2d 442 (7th Cir. 1988); *Whitney v. Brown*, 882 F.2d 1068 (6th Cir. 1989); *Williams v. Lane*, 851 F.2d 867 (7th Cir. 1988); *Tribble v. Gardner*, 860 F.2d 321 (9th Cir. 1988).

In short, merely because the circuits reach different results when the *Turner* standard is applied to different fact situations does not mean the circuits are split.

III.

THE ESSENCE OF PETITIONERS' CHALLENGE IS THAT THE COURT BELOW ERRED IN ITS FACTUAL FINDINGS RATHER THAN IN THE APPLICATION OF LEGAL STANDARDS.

A fair reading of the opinion below leads to the conclusion the Court of Appeals applied the *Turner* reasonable relationship test to the evidence in the record. It cannot be denied that the Court of Appeals was required to determine the effect of Respondent's "a/k/a" alternative on the penological interests the committed name policy purportedly serves.

Thus, Petitioners do not ask this Court to settle an important, unsettled question of federal law but to resolve factual issues. Those issues include:

1) how much paperwork would the "a/k/a" alternative involve;

2) would Muslim inmates use the "a/k/a" alternative as a pretext to clog the system or cause confrontations; and

3) would the "a/k/a" alternative create confusion regarding an inmate's identity.

Respondent respectfully submits that a review of this case would require the resolution of numerous factual issues and, accordingly, does not warrant the exercise of this Court's discretionary Certiorari jurisdiction.

CONCLUSION

The decision below was correct on the law and reached an equitable result. No special or important reason exists for granting the Petition because there is no conflict between the circuits or unsettled question of federal law.

Respectfully submitted,

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